

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

BakerHostetler

TCC Oral Argument
Bankr. N.D. Cal.

June 5, 2020

Robert A. Julian

REGISTRATION RIGHTS

Overview

1. The Victims cannot be treated equally with the other claimants being paid in cash, unless the Fire Victim Trust can liquidate stock within a reasonable time.
2. The Fire Victim Trust cannot liquidate stock without a Registration Rights Agreement.
3. The Equity Backstop Parties' financing letters state they must have a Registration Rights Agreement too.
4. The RSA Settlement states that these equity documents must be reasonable, and the TCC must consent to them.
5. The TCC has not consented to date.
6. The Court's order should confirm that the Plan will not become effective unless the TCC consents to the Fire Victim Trust's and the Equity Backstop Parties' reasonable Registration Rights Agreements.
7. Otherwise, the Victims' RSA settlement will be violated, and the Victims' recovery placed at risk.

REGISTRATION RIGHTS

The Fire Victim Trust Is Receiving Restricted Securities

“If the Fire Victims Trust is considered an ‘affiliate’ of Reorganized PG&E or the common stock is deemed to be ‘restricted’ within the meaning of applicable securities laws, then sales of common stock by the Fire Victim Trust must be registered for resale under applicable securities or sold in accordance with certain time, volume and manner of sale limitations.”

Disclosure Statement, Dkt. No. 6353, at 31.

REGISTRATION RIGHTS

Under Rule 144:

If an investor owns restricted securities, it must hold the securities for 6 months before it can begin to sell them.

And, if an investor is an “affiliate” (generally meaning it holds more than 10%), every three months, it can sell up to the greater of (i) 1% of the outstanding shares or (ii) the average reported weekly trading volume.

SEC, Rule 144: Selling Restricted and Control Securities, available at <https://www.sec.gov/reportspubs/investor-publications/investorpubsrule144htm.html>.

REGISTRATION RIGHTS

There Are Two Key Requirements for a Registration Rights Agreement for the Fire Victim Trust:

First, it must be a reasonable agreement recommended by the Debtors' underwriter.

"1.6 Aggregate Fire Victim Consideration means the aggregate consideration used to fund the Fire Victim Trust of . . . (c) \$6.75 billion in New HoldCo Common Stock . . . And reasonable registration rights consistent with the recommendations of the Debtors' equity underwriter and tax rules and regulations"

TCC RSA Amendment, Dkt. No. 5143-1 at 2, Richardson Decl., Dkt. No. 7322 at paragraph 5 and Ex. B., and Debtors' Amended Plan, Section 1.6.

Second, it must be acceptable to the TCC and Consenting Fire Claimant Professionals.

RSA Term Sheet Page 48: "Conditions to Effectiveness: The Confirmation Order [and] All definitive documents relating to the Plan, capitalization, equity and debt financing shall be in form and substance reasonably acceptable to the Plan Proponents and the Requisite Consenting Fire Claimant Professionals."

TCC RSA, Dkt. No. 5038-1 at 48, Richardson Decl., Dkt. No. 7322, Ex. B.

REGISTRATION RIGHTS

No Waiver – RSA Amendment did not alter requirement for TCC consent

“this Amendment shall not constitute a waiver by any Party of any rights or claims related to the RSA, and all Parties hereby reserve any and all rights not expressly amended or modified herein.”

TCC RSA Amendment, Dkt. No. 5143-1 at 3, Richardson Decl., Dkt. No. 7322, Ex. B.

REGISTRATION RIGHTS

“Requisite Consenting Fire Claimant Professionals’ [means] (i) the TCC, acting by vote of simple majority of its members; and (ii) the Consenting Fire Claimant Professional Group, acting by vote of a simple majority of its members.”

TCC RSA, Dkt. No. 5038-1 at 3, Richardson Decl., Dkt. No. 7322, Ex. B.

REGISTRATION RIGHTS

Backstop Parties' Registration Rights:

(1) Reorganized Holdco will enter into a registration rights agreement with the Backstop Party . . . which . . . shall . . . (iv) otherwise be in form and substance reasonably acceptable to the holders of a majority of the Aggregate Backstop Commitments.

Form of Backstop Commitment Letter, Dkt. No. 6013-3 at 6.

REGISTRATION RIGHTS

Reasonable Terms of a Registration Rights Agreement Requires Equal Lockups for All Investors.

Williams Declaration:

“16. The Comparable Agreements demonstrate by their terms that, when a company requires a lock-up provision, they have applied the terms equally across all investors receiving stock in the offering. None of the Comparable Agreements included individualized registration rights agreements. None of the Comparable Agreements required a lock-up for certain investors while exempting others, or established a different lock-up duration across differently situated investors.”

Declaration of Brent Williams, Dkt. No. 7326.

REGISTRATION RIGHTS

Comparable Agreements

- *In re Weatherford International plc*, (Bankr. S.D. Tex. 2019) [Dkt. 315]
- *In re Avaya, Inc.*, (Bankr. S.D.N.Y. 2017) [Dkt. 1490]
- *In re Caesars Entertainment Operating Company, Inc.*, (Bankr. N.D. Ill. 2015) [Dkt. 7467-10]
- *In re Arch Coal, Inc.*, (Bankr. E.D. Mo. 2016) [8-K filing]
- *In re Energy Future Holdings Corp.*, (Bankr. D. Del. 2014) [Dkt. 9741]
- *In re Cengage Learning, Inc.*, (Bankr. E.D.N.Y. 2013) [Dkt. No. 1258]

Declaration of Brent Williams, Dkt. No. 7326, paragraph 15.

REGISTRATION RIGHTS

The Debtors' Response

- 3 month mediation.
 - The mediation agreement prohibits sharing any information with anyone that is not a Party to the mediation agreement. This includes referring to, characterizing, or describing the document to any other non-Party.
- Not addressed in Debtors' Confirmation Order.
- The Debtors have presented no evidence.
- The Debtors agree that Registration Rights is a negotiated condition to the Effective Date.

REGISTRATION RIGHTS

Timing

THE COURT: Could I confirm this plan if that rights agreement matter is still unresolved?

MR. KAROTKIN: I think you could. I don't think the plan could go effective without it being resolved, necessarily.

Hr'g Tr., June 3, 2020, at 28:22-29:1

REGISTRATION RIGHTS

The TCC's Proposed Confirmation Order Enforcing the RSA Settlement:

Pursuant to the settlement embodied in the Term Sheet to the Tort Claimant RSA, all definitive documents relating to the Debtors' equity and debt financing, which are defined herein as the Plan Funding Documents, and which include but are not limited to all registration rights agreements related to equity issuances under the Plan, shall be in form and substance reasonably acceptable to the Tort Claimants Committee, by simple majority vote, and the Consenting Fire Claimant Professionals Group, by simple majority vote. The Bankruptcy Court shall retain jurisdiction to resolve any issues regarding registration rights as it relates to the Fire Victim Trust and Equity Backstop Parties. All registration rights agreements with the various shareholders must contain the same rights and limitations.

SECTION 1141 DISCHARGE

- 100% payment case.
- All of these claims could have been filed.

EXCULPATION

The TCC Supports the Debtors' Position as Argued in the TCC's Reply Brief

- Consistent with *PG&E I*, an ordinary negligence exculpation is appropriate.

See Order, issued Dec. 22, 2003, Case No. 01-30923, Dkt. No. 14272, at paragraph 26.

- TCC members, lawyers and representatives included.

SUBORDINATION OF SECURITIES CLAIMS UNDER SECTION 510(b)

The Confirmation Order must state that the securities plaintiffs' claims are subordinated to Fire Victim Claims under section 510(b); consequently, any stock issued to them may not dilute the percentage of stock owned by the Fire Victim Trust.

Federal and State Settlements

The Government Settlements are binding on the Fire Victim Trustee. Identical provisions in Federal and State Settlements:

“3.11 Binding on Trustee, Claims Administrator, and Successors. This Agreement shall be binding upon and inure to the benefit of the Trustee, Claims Administrator, respective predecessors, successors, assigns, heirs, legatees, affiliates, parents, subsidiaries, shareholders, officers, directors, employees, partners, agents, principals, attorneys, representatives, and professionals (as applicable) of the Parties to the extent provided by law.”

Federal Agency Settlement, 6940-1, State Agency Settlement, 6940-2.

ESTIMATION ORDER

- 9019 settlement order already in place.
- In view of settlement order, no estimation order is necessary.

INSURERS' ONGOING OBLIGATIONS

The TCC's Proposed Language for Confirmation Order:

Addition to section 41(b):

Except as specifically provided in the Plan or in any releases executed in connection therewith, nothing contained in this Confirmation Order or in the Plan shall be deemed to release any Insurer who has issued an insurance policy to a Fire Victim, or any assignee under such a policy, of their contractual or common law obligations to the insured.

BakerHostetler

Atlanta
Chicago
Cincinnati
Cleveland
Columbus
Costa Mesa
Dallas
Denver
Houston
Los Angeles
New York
Orlando
Philadelphia
San Francisco
Seattle
Washington, DC

bakerlaw.com